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SIPDIS

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DEPT FOR EUR/CARC, EB/IPE, EB/CIP
PLS PASS TO USTR PAUL BURKHEAD
PLS PASS TO USPTO JOELLEN URBAN

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SUBJECT: ARMENIA: COMMENTS FOR 2007 SPECIAL 301 REVIEW

REF: A) STATE 7944 B) 06 YEREVAN 254

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1. (SBU) Summary: Post recommends that Armenia remain off the Special 301 Watch List for 2007. Music and video piracy does exist and there are look-alike products and store fronts, but industry losses in the Armenian market are probably small. The IPR Enforcement Unit within the Organized Crime Department of the Armenian Police, established in 2005, is growing stronger and recent and proposed changes to IPR legislation will make it easier to prosecute IPR violators. Some American companies, including Forbes and Microsoft, are also successfully working to promote IPR through education programs and negotiated solutions, rather than through criminal law enforcement. We will continue to work with the GOAM to better protect intellectual property rights, but do not feel Special 301 Watch List action is appropriate at this time. End summary.

2. (SBU) While enforcement remains weak, Armenia's legislation is TRIPS compliant and recent legislative changes will likely improve enforcement efforts. The GOAM adopted a revised Law on Copyright and Related Rights in June 2006, clarifying uncertainties which existed in the previous legislation. The Criminal Code was also amended in 2006 to lower the damage threshold in copyright and trademark cases from approximately USD 1,400 to USD 560, and there are proposed amendments which will further lower the damage threshold to approximately USD 150. The threshold is calculated on a "per instance" formula rather than cumulatively, so each print run of any particular pirated CD or book must be sufficient to reach the threshold level in order for the violator to be subject to prosecution. Even with these improvements, however, most artists and authors are unable to meet the minimum damage threshold.

3. (SBU) In addition to the damage threshold, the fact that the government cannot initiate (ex officio) IPR prosecutions under Armenian law remains a significant hurdle to enforcement. Under Armenian law, an aggrieved party must file a complaint before any enforcement action is taken. There have been few successful prosecutions of IPR cases and many companies and artists feel it is a waste of time to file complaints or seek legal redress. This reluctance to complain was exacerbated by the fact that the most high profile IPR case in 2005, the case of Reco Records (ref B) was dismissed for failure to meet the damage threshold. There is a proposal to introduce administrative fines for copyright infringement which, if passed, would help resolve this problem.

¶4. (SBU) Many businesses have decided to try to resolve suspect IPR cases without resorting to criminal court complaints. Forbes Magazine, for example, with assistance from the Armenian Ministry of Trade, was able to stop publication of an unlicensed copycat magazine, Armenian Forbes, and is negotiating a legitimate licensing agreement with the Armenian publisher. Limited Brands corporation is also planning to bring a complaint before the Armenian State Commission for the Protection of Economic Competition to close a store which is illegally using its Victoria's Secret brand.

¶5. (SBU) Microsoft has been working to promote IPR adherence through education and concession agreements. In January 2007, Microsoft signed an agreement with the Government to provide reduced cost software to all government agencies on the condition that the government stop using unlicensed software. Microsoft has also agreed to help develop an information technology curricula for Armenia schools which will emphasize IPR and to support the development of a Microsoft innovation center dedicated to promoting IT development in Armenia. Since March 2006, when Microsoft began operations in Armenia, the company has had significant success persuading companies to move to licensed software in conjunction with Microsoft-provided consulting services, upgrade and maintenance programs.

¶6. (SBU) The local NGO Armauthor also works to protect the IPR rights of composers, musicians and other artists. This organization, established in 2001, helps artists to collect royalties through collective negotiations with local television and radio stations and coordination with international royalty collecting agencies, such as the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. Recently, Armauthor has been increasingly active on IPR enforcement issues, sending letters of complaint to the police and helping to increase awareness of IPR within the creative community.

¶7. (SBU) Understanding of IPR related issues within the GOAM remains mixed. The Intellectual Property Agency of Armenia, an independent

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division responsible for patents and copyrights within the Ministry of Trade and Economic Development and the IPR Police Enforcement Unit are staffed by forward-thinking individuals who are committed to protecting IPR. The Minister of Trade, however, and other high ranking GOAM officials, seem less persuaded about the need to protect IPR and appear to view IPR violations, particularly those related to companies which do not have a presence in Armenia, as a victimless crime.

¶8. (U) Post continues to work with the GOAM to improve IPR enforcement in Armenia. The USAID-sponsored Commercial Law and Economic Regulation Project (CLERP) advised the GOAM on its 2006 legal amendments and helped organize a series of six seminars in cooperation with the Armenian NGO Armauthor to help artists and other creative Armenians better understand their rights. We, and high-ranking visitors from Washington, including Commerce DAS Paul Dyck, have raised IPR issues in numerous fora. We continue to push for improved understanding of IPR at the highest levels.

¶9. (SBU) Armenia is making progress in fine-tuning its IPR related legislation and increasing its ability to take appropriate enforcement action. Public recognition of IPR as an issue is also growing and businesses are increasingly successful in defending IPR, particularly in negotiated settlements. Given Armenia's commitment to protect IPR and the government's continued willingness to collaborate closely with the Embassy, USAID and other members of the international community, we recommend that that Armenia remain off the Special 301 Watch List.

GODFREY